

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

ON DEMAND DIRECT RESPONSE, LLC,

Case No. 2:15-cv-01576-MMD-GWF

Plaintiff,

## ORDER

SHANA LEE MCCART-POLAK,

Defendant.

This matter is before the Court on Defendant Shana Lee McCart-Pollak's Motion to Compel Compliance with Subpoena to Produce Documents (ECF No. 399), filed on November 30, 2018. Also before the Court is Plaintiffs On Demand Direct Response III, LLC and On Demand Direct Response LLC's and Defendant McCart-Pollak's Joint Motion Regarding Due Date (ECF No. 401), filed on December 14, 2018. Third Party Defendant Kevin Harrington filed his Response (ECF No. 403) on December 17, 2018 and Defendant McCart-Pollak filed her Notice of Errata (ECF N. 404) on December 19, 2018.

## **BACKGROUND**

On June 20, 2018, default judgment in favor of Defendant and Third-Party Plaintiff Shana Lee McCart-Pollak (hereinafter “McCart-Pollak”) and against Plaintiff and Third-Party Defendant On Demand Direct Response III, LLC and On Demand Direct Response, LLC (hereinafter “On Demand”) was entered. *See* ECF Nos. 341, 363. On August 6, 2018, McCart-Pollak filed a renewed motion requesting an award of damages. ECF No. 380. The Court conducted a prove-up hearing on October 16, 2018. McCart-Pollak attempted to obtain discovery from Spiral Toys as efforts to obtain discovery from On Demand were unsuccessful. On October 16, 2018, the Court reopened discovery until December 17, 2018 for the limited

1 purpose of obtaining additional documents and/or seeking compliance with a previously served  
2 subpoena on Spiral Toys. *See* ECF No. 390.

3 On October 24, 2018, McCart-Pollak served a subpoena for the production of documents  
4 on Spiral Toys via its registered agent, Incorp Services, Incorporated. *See Motion to Compel*  
5 (ECF No. 399), 3. Spiral Toys failed to respond to the subpoena. When McCart-Pollak  
6 contacted Spiral Toys' registered agent to inquire as to whether the subpoena was served, the  
7 registered agent informed her that the subpoena was sent to Spiral Toys via email. *Id.*  
8 McCart-Pollak requests that the Court compel Spiral Toys to comply with the subpoena for the  
9 production of documents and for Spiral Toys' registered agent to disclose the email address of  
10 the individual who received the subpoena that was forwarded from the registered agent.

## 11 DISCUSSION

12 Rule 45 of the Federal Rules of Civil Procedure governs discovery by subpoena. Pursuant  
13 to Rule 45, a nonparty served with a subpoena has three options: it may (1) comply with the  
14 subpoena, (2) serve an objection on the requesting party in accordance with Rule 45(c)(2)(B), or  
15 (3) move to quash or modify the subpoena in accordance with Rule 45(c)(3). *Genx Processors*  
16 *Mauritius Ltd. v. Jackson*, 2018 WL 5777485, at \*9 (D. Nev. Nov. 2, 2018) (citing *In re Plise*, 506  
17 B.R. 870, 878 (B.A.P. 9th Cir. 2014)). When a nonparty raises timely objections to the subpoenas,  
18 the nonparty is not required to produce documents, or even search for them, until the propounding  
19 party obtains an order directing compliance. *Id.* Failure to serve timely objections may constitute  
20 a waiver of objections to the subpoena, other than objections to service. *Forsythe v. Brown*, 281  
21 F.R.D. 577, 587 (D. Nev. 2012), report and recommendation adopted, (D. Nev. May 18, 2012).  
22 Spiral Toys failed to serve any objection to the subpoena and has not responded to the motion to  
23 compel. The Court grants McCart-Pollak's motion to compel. Spiral Toys is ordered to comply  
24 with the subpoena. Failure to comply may result in a contempt of court order of this Court. The  
25 registered agent, Incorp Services, Incorporated, is instructed to provide McCart-Pollak with the  
26 email address of the individual who received the subpoena from the registered agent.

27 Rule 45(e) provides that a court may "hold in contempt a person who, having been served,  
28 fails without adequate excuse to obey the subpoena." *Forsythe*, 281 F.R.D. at 587. McCart-Pollak

1 requests her reasonable fees and costs of bringing her motion to compel pursuant to Rule 45(e).  
2 District courts have discretion as to whether to grant fees and costs. *Yeti by Molly, Ltd. v. Deckers*  
3 *Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir.1992). The Court grants McCart-Pollak's request  
4 for reasonable fees and costs of bringing her motion to compel. The Court, however, will not  
5 award costs for the service of the subpoena, which is a cost that McCart-Pollak would have  
6 incurred regardless of whether Spiral Toys had responded to it. McCart-Pollak shall file her  
7 application describing her costs legitimately incurred in relation to her motion to compel no later  
8 than **January 21, 2019**.

9 In addition, McCart-Pollak and On Demand request that the deadline to file the renewed  
10 motion to calculate damages be extended by an additional sixty (60) days. The extension is  
11 requested to allow McCart-Pollak to complete discovery related to her renewed motion to calculate  
12 damages. Third-Party Defendant Harrington does not oppose the requested extension, but did not  
13 join the joint motion for extension because he objected to specific language contained within the  
14 motion. The Court finds good cause to grant the requested extension. The Court, therefore, grants  
15 the parties' request to extend the renewed motion to calculate damages deadline by an additional  
16 sixty (60) days. McCart-Pollak shall have until **February 15, 2019** to seek discovery from Spiral  
17 Toys as indicated previously and within this Order. McCart-Pollak may file a renewed motion to  
18 calculate damages no later than **February 22, 2019**. Accordingly,

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1           **IT IS HEREBY ORDERED** that Defendant Shana Lee McCart-Pollak's Motion to  
2 Compel Compliance with Subpoena to Produce Documents (ECF No. 399) is **granted**.

3           **IT IS FURTHER ORDERED** that McCart-Pollak shall file her application for costs no  
4 later than **January 21, 2019**.

5           **IT IS FURTHER ORDERED** that Plaintiffs On Demand Direct Response III, LLC and  
6 On Demand Direct Response LLC's and Defendant McCart-Pollak's Joint Motion Regarding Due  
7 Date (ECF No. 401) is **granted**. McCart-Pollak shall have until **February 15, 2019** to seek  
8 discovery from Spiral Toys as indicated previously and within this Order. McCart-Pollak may file  
9 a renewed motion to calculate damages no later than **February 22, 2019**.

10           Dated this 11th day of January, 2019.

11  
12             
13           

---

  
14           GEORGE FOLEY, JR.  
15           UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28